

In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)	Miscellaneous
)	Disciplinary Matter
R. Wade Gastin)	Number <u>97-4-1</u>
)	

ORDER

Pursuant to notice, the above-captioned matter came on for hearing on May 16, 1997, at 11:00 o'clock a.m., to consider disciplinary action against attorney R. Wade Gastin in accordance with the terms of an Order to show cause entered on April 25, 1997. After considering the evidence taken in response to the Notice to Show Cause, this Court, sitting *en banc*, enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

On June 11, 1996, Respondent addressed a letter to the Judges of this Court requesting leave of absence for the period November 25, 1996, through December 6, 1996. The letter recited "I have arranged for John E. Pytte, my associate, to handle these hearings during my absence." On December 19, 1996, the Chapter 13 Trustee,

Sylvia Ford Brown, addressed a letter to Respondent with copies to Bankruptcy Judges Davis and Walker and to Mary C. Becton, Clerk of the Bankruptcy Court,

... regarding my concern about the numerous pleadings filed by your staff during your absence from the city November 22 through December 6, 1996. During that period we received approximately 37 new petitions and several motions, requests for hearings, etc., which purport to bear your signature It is my understanding that neither you nor any other attorney was in your office from November 22-December 6. Thus it appears that the requisite supervision was lacking.

Upon inquiry from the Court the Chapter 13 Trustee filed a list of 32 cases, attached hereto as Exhibit "A," which her investigation revealed were filed during the period of time that Respondent was absent from the city.

Subsequent to Respondent's letter to the Trustee advising her that John E. Pytte would handle hearings during Respondent's absence, Mr. Pytte left the employment of the Respondent. Because of Mr. Pytte's departure, and unbeknownst to the Trustee, Respondent arranged with Tammy Bowen, a member of the Georgia Bar and the bar of this Court, who has a long-standing space sharing arrangement with the Respondent, to review and authorize the filing of new bankruptcy petitions and other pleadings on Mr. Gastin's behalf. Respondent also hired Chris Steinmetz, a member of the Georgia Bar and a member of the bar of this Court, as associate counsel to appear

at hearings which were assigned during the week of his absence.

Respondent did not disclose the role Ms. Bowen played in response to the Trustee's December 19, 1996, letter which ultimately precipitated this hearing, but the uncontradicted evidence is that Ms. Bowen authorized the filing of all 32 cases. Specifically, Ms. Bowen was continuously in the office during the relevant period of time, other than the Thanksgiving holiday. In each case she reviewed the pleadings prepared by the staff,¹ conducted follow-up interviews with some clients, made changes in some of the petitions and authorized that they be filed. When she made the decision to file each case, however, Ms. Bowen did not sign the petitions as counsel. Each of the cases bore the signature "R. Wade Gustin," but in fact none of the petitions were signed personally by Mr. Gustin or Ms. Bowen. Rather they were each signed by a member of Mr. Gustin's staff after Ms. Bowen's authorization, but without revealing that the signature was affixed by a non-lawyer.

Respondent's bankruptcy paralegal testified that the standard procedure in their office, which was adhered to during the period in question, is that clients seeking bankruptcy relief are informed that they are to bring the name and address of each creditor which is owed money, and that the paralegal or other staff member prepares a

¹ In one case the pleadings were prepared by counsel from Hinesville, Georgia, rather than Respondent's staff. This attorney refers clients to Mr. Gustin after he conducts the initial interview and prepares pleadings. In this one case, the papers were prepared in Mr. Newmark's office, forwarded to Mr. Gustin's staff, and the staff member affixed the signature of Respondent without revealing that the signature was affixed in a representative capacity.

draft bankruptcy petition. However, the staff has been instructed, and adheres to the limitation, that if the client asks any questions which call for the rendering of legal advice, they inform the client that they are not permitted to engage in such activity, and refer the question to Mr. Gastin directly. At no time were cases filed during the period of Mr. Gastin's absence from Savannah without Ms. Bowen's review and approval.

United States District Court for the Southern District of Georgia Local Rule 83.5 applicable to practice in this Court provides as follows:

(a) Any member of the bar of this Court may for good cause shown, and after an opportunity has been given him to be heard, be disbarred, suspended from practice for a definite time, reprimanded, or subjected to such other discipline as the Court may deem proper.

(d) The standards of professional conduct of the members of the bar of this Court shall include the current canons of professional ethics of the American Bar Association. A violation of any of these rules in connection with any matter pending before this Court may constitute a contempt of this Court potentially subjecting such attorney to appropriate disciplinary action.

The Trustee's letter raises, in essence, two issues regarding Respondent's conduct regarding these 32 cases. First, whether, because of his absence and the lack of adequate supervision of paraprofessionals, Respondent aided a non-lawyer in the unauthorized practice of law in violation of ABA Model Rule 5.5. Second, whether the

affixing of Respondent's signature to the bankruptcy petitions filed during the period of his absence violated ABA Model Rule 8.4 or Bankruptcy Rule 9011.

CONCLUSIONS OF LAW

Unauthorized Practice of Law

The current canon of professional ethics of the American Bar Association which is relevant to this case is found in ABA Model Rule 5.5(b) which reads as follows:

A lawyer shall not:

(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

This language is essentially the same as that found in the provisions of Part IV of the Rules of the State Bar of Georgia governing discipline and in particular Standard 24 which reads as follows:

A lawyer shall not aid a nonlawyer in the unauthorized practice of law. A violation of this standard may be punished by a public reprimand.

That Standard has been the subject of Advisory Opinion Number 21 of the State

Disciplinary Board entitled “Guidelines for Attorneys Utilizing Paralegals.” *See also* O.C.G.A. § 15-19-50.

Upon consideration of the evidence in this case, we conclude that Mr. Gastin did not violate ABA Model Rule 5.5 and the corresponding disciplinary provisions of the State Bar of Georgia in aiding a nonlawyer in the unauthorized practiced of law as amplified by State Disciplinary Board Opinion 21 in that the matters delegated to nonlawyer paralegals were limited to permitted activities as follows:

- (1) The interview of clients, witnesses and other persons with information pertinent to any cause being handled by the attorney.
- (2) Legal research and drafting of pleadings, briefs of law and other legal documents for the attorney’s review, approval and use.

Adv.Op. No. 21 ¶ 13, 14 (Sept. 16, 1977). *See also* Lanier v. Lanier, 79 Ga.App. 131 (1949). Further, we find that Respondent did not delegate any of the activities prohibited by Advisory Opinion Number 21 to his paralegals in connection with the 32 cases which are the subject of this hearing. It is clear that Mr. Gastin’s staff is highly trained and aware of the limitations of their authority as nonlawyer paralegals. It is also clear that they adhered to these limitations faithfully throughout the period of his absence from the city, and that the work product they created in accordance with his guidelines

and limitations was, in all cases, reviewed by attorney Tammy Bowen, in some instances amended and modified by her, and filed only after her final review and approval of the proposed pleadings.

The Attorney's Signature Requirement

Respondent was also cited to show cause whether there had been a violation of ABA Model Rule 8.4 which provides in part as follows:

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice . . .

Based on the evidence before us we conclude that there was no misconduct as defined in Rule 8.4 engaged in by the Respondent, except to the extent that Respondent may, in the manner he authorized his signature to be affixed to pleadings, have violated the requirements of Bankruptcy Rule 9011. In that regard Bankruptcy Rule 9011 provides as follows:

(a) SIGNATURE. Every petition, pleading, motion and other paper served or filed in a case under the Code on behalf of a party represented by an attorney, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name, whose office address and telephone number shall be stated. A party who is not represented by an attorney shall sign all papers and state the party's address and telephone number. The signature of an attorney or a party constitutes a certificate that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact that is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass, or to cause unnecessary delay, or needless increase in the cost of litigation or administration of the case. If a document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the person whose signature is required. If a document is signed in violation of this rule, the court on motion or on its own initiative, shall impose on the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney's fee.

From the evidence received at the hearing we conclude that Respondent violated the provisions of Bankruptcy Rule 9011 in that none of the petitions which purported to bear Respondent's signature were in fact signed by the Respondent in his individual name. It is true that Respondent's name was affixed to each of the pleadings by someone else and that he had authorized that person to do so. Nevertheless, as we read Rule 9011 the

signature requirement is that it be affixed by an attorney of record. We adopt as the proper definition of the term to “sign” the following:

To affix one’s name to a writing or instrument, for the purpose of authenticating or executing it, or to give it effect as one’s act; to subscribe in one’s own handwriting. To make any mark, as upon a document, in token of knowledge, approval, acceptance or obligation.

Black’s Law Dictionary, 1239 (5th ed. 1979). The plain meaning of Rule 9011 is consistent with this definition which requires a signature, in whatever form to be placed on the document in question by the person whose signature it purports to be. We conclude that it is not appropriate for a person to authorize another to sign a document without revealing the signing individual’s name.

While Respondent clearly intended to bear full responsibility for the acts of his staff taken in accordance with the training and limitations that he placed on their activities, and while they were adequately supervised by a member of the bar, nevertheless, it is not permissible to delegate to anyone other than another attorney the placing of a signature on a pleading for the purposes of Rule 9011. Further, we conclude that the requirement that pleadings be signed by at least one attorney of record demands that even a signature on a pleading properly executed by counsel on behalf of a partner, associate, or other co-counsel, must be subscribed first in the name of the attorney

signing, and then may reveal that the signature is in a representative capacity. In this case, the signature should have taken the following form: “Tammy L. Bowen for R. Wade Gastin.”

Respondent stated that, after review of his procedures relating to these cases and consultation with counsel, he already had instituted procedural changes whereby petitions filed when he is absent, which have been reviewed by Ms. Bowen, will either be signed “Tammy L. Bowen for R. Wade Gastin” or “R. Wade Gastin by Tammy L. Bowen.” We perceive a substantive difference in the two forms. In the former, the attorney who undertakes to sign a pleading on behalf of another makes it clear that he or she makes the certifications required by Bankruptcy Rule 9011. This form of signature also conveys the reality that lead counsel in the case is the attorney for whom the pleading is signed, but the attorney who has supervised the preparation and filing of the pleadings clearly undertakes the ethical obligations of Bankruptcy Rule 9011 and subjects himself or herself to the imposition of sanctions for any violation of that rule. In contrast, the latter form of signature would purport, through the signature of the associate lawyer, to constitute a certification by lead counsel, not the subscribing attorney, to the requirements of Bankruptcy Rule 9011. It is not permissible for an attorney to make the Rule 11 certification for someone else. Bankruptcy Rule 9011 requires that “[e]very petition, pleading, motion and other paper served or filed in a case under the Code on behalf of a party represented by an attorney . . . shall be signed by at

least one attorney of record in the attorney's individual name” Under the facts of this case Respondent failed to meet this requirement.

Accordingly, we find that Bankruptcy Rule 9011 was violated by Respondent when he authorized someone to sign pleadings on his behalf when the affixing of the signature failed to comply with the requirement that the pleading be signed by “at least one attorney of record in the attorney’s individual name.”

In such a case, it is mandatory that the Court “shall impose on the person who signed it, the represented party, or both, an appropriate sanction.” See In re Gioioso, 979 F.2d 956, 960 (3rd Cir. 1992). Implicit in this directive is the requirement that sanctions be imposed upon the individual who fails to properly sign as required by Rule 9011. Respondent, quite appropriately, assumed full responsibility for his staff’s actions. Whether he assumed responsibility or not, the facts establish that Respondent’s staff acted at his direction in signing his name to the filings. Respondent caused the filings to be signed in violation of Rule 9011. The Rule contemplates mandatory sanctions for its violation which may include costs and attorney’s fees. In this case, however, there has been no incurring of any expense or attorney’s fees on the part of an opposing party. Therefore, we hold that an appropriate sanction may also include a reduction in counsel’s attorney’s fees, suspension from practice, public or private reprimand, or other action.

Having considered the evidence before us, the totality of the circumstances and the novelty of the issue, we conclude that the least serious form of sanction should be imposed. Suspension from practice or fee reduction is inappropriate in light of the nature of the error, Respondent's honest intent, and the lack of prejudice to his clients' or other parties. To publicly reprimand or admonish counsel adequately serves the purpose on these facts, and because reprimand connotes a more severe remedy, we decline to issue one. To admonish is "to caution, to advise or to warn, or to remind of an obligation." We believe that admonishment is sufficient. We are persuaded in this course of action by the following:

(1) Counsel's caliber of practice before this Court is generally exemplary;

(2) Counsel had provided for an effective means of ensuring adequate supervision of his staff during the period of his absence through the supervision and approval of all pleadings by Ms. Bowen;

(3) Counsel recognized and intended, at the time his name was placed on the pleadings, that he was fully responsible for the conduct of his staff and for the accuracy of his pleadings to the same extent as if he had personally placed his signature on them.

In recognizing the scope of his duty and having taken actions, prior to the

time of the hearing, to correct his office procedures in the manner referred to above -- which with slight modification would be wholly consistent with the procedures which we approve in this opinion, we conclude that any more severe sanction would be inappropriate.

The signature requirements of Rule 9011 are, however, of sufficient seriousness and so specific, that other practitioners similarly situated may, like Respondent, be in violation. To insure that the Bar generally is made aware of the disciplinary requirements as we interpret them, this decision to admonish counsel will be made public and shall be disseminated widely for guidance, not only to Respondent, but to all.

IT IS THEREFORE ORDERED that Respondent, R. Wade Gustin, be admonished for his failure strictly to abide by the provisions of Bankruptcy Rule 9011, that this admonishment be filed in the cases attached as Exhibit "A," that the record of these proceedings be unsealed, and that a copy of this Order be posted on the public notice boards of the Bankruptcy Court facilities in Savannah and Augusta for a period of thirty (30) days from the entry hereof and published in the Opinions Retrieval System of this Court.

This _____ day of June, 1997.

Lamar W. Davis, Jr.,
United States Bankruptcy Judge
For the Court

Exhibit “A”

Re: Miscellaneous Disciplinary Matter Number 97-4-1

CYNTHIA DENISE RILEY	<u>96-43008-LWD</u>
MICHAEL H. GIVENS	<u>96-43009-JDW</u>
WALTER E. HAMMOND, JR.	<u>96-43010-LWD</u>
CYNTHIA D. HAMMOND	
LOUISE P. WISE	<u>96-43011-JDW</u>
DORIS A. WILLIAMS	<u>96-43012-LWD</u>
BRIAN E. BATCHELOR	<u>96-43013-LWD</u>
MONICA C. BELLE	<u>96-43023-LWD</u>
REGINALD D. WRIGHT	<u>96-43034-LWD</u>
CANDACE S. PRICE	<u>96-43036-JDW</u>
ADAM T. ALEXANDER	<u>96-43040-LWD</u>
CALVIN T. DAVIS, SR.	<u>96-43051-LWD</u>
JOHNNY JAMES WORTHY	<u>96-43052-JDW</u>
PATRICIA GARRETT SMITH	<u>96-43053-LWD</u>
WILLIE J. SIMMONS	<u>96-43054-LWD</u>
CARL E. MURRAY, JR.	<u>96-43055-JDW</u>
ALLDREIN P. MURRAY	
DENNIS L. BADGER	<u>96-43056-LWD</u>

LEATRICE B. BADGER	
JOSEPH SHANE STAFFORD	<u>96-43057-LWD</u>
ANGELA M. STAFFORD	
EVELYNIE M. COOK	<u>96-43060-LWD</u>
UEL DEAN BURTON	<u>96-43061-JDW</u>
BLENDA S. BURTON	
DENISE BOONE	<u>96-43062-LWD</u>
KELVIN L. ALEXANDER	<u>96-43082-LWD</u>
SHERI L. MARSHALL	<u>96-43083-LWD</u>
MARY E. MCCORMICK	<u>96-43084-JDW</u>
PARNELL WASHINGTON	<u>96-43085-LWD</u>
CLARENCE R. DAMRON	<u>96-43086-LWD</u>
LINDA M. DAMRON	
AUDREY D. ROBERTS	<u>96-43087-JDW</u>
THERESA D. PRICE	<u>96-43088-LWD</u>
HENRIETTA VIOLA NIXON	<u>96-43093-LWD</u>
JOHN LEE BAKER, JR.	<u>96-43094-JDW</u>
TED A. DEROUEN	<u>96-43110-JDW</u>
SANDRA K. DEROUEN	
EDWARD W. STEWART	<u>96-43120-JDW</u>
THOMAS EDDIE MCCULLOUGH	<u>96-43121-LWD</u>
AMANDA D. MCCULLOUGH	